

Service Date: September 12, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Joint Application of)	UTILITY DIVISION
NorthWestern Corporation and Babcock &)	
Brown Infrastructure Limited, BBI US Holdings)	DOCKET NO. D2006.6.82
Pty Ltd., BBI US Holdings II Corp., and BBI)	ORDER NO. 6754a
Glacier Corp. for Approval of the Sale and Transfer)	
of NorthWestern Corporation Pursuant to a Merger)	
Agreement)	

**ORDER DENYING, IN PART, AND GRANTING, IN PART, MOTIONS FOR
PROTECTIVE ORDERS AND ORDERING PRODUCTION**

Background

1. On July 21, 2006, the Commission Staff sent data requests to NorthWestern Corporation (NORC) and Babcock & Brown Infrastructure (BBI). The procedural order in this docket required NORC and BBI to object to discovery by July 26th or to respond by August 4, 2006.
2. On July 26, 2006, the Montana Consumer Counsel (MCC) sent data requests to NORC. The procedural order required NORC or BBI to object to discovery by August 1st or to respond by August 7th.
3. Neither NORC nor BBI objected to any data request.
4. On August 4th the Commission received NORC and BBI's responses to the Commission's data requests.
5. On August 10th the Commission received NORC and BBI's responses to the MCC's data requests.
6. In their respective responses, NORC and BBI asserted that the information sought by the following data requests is confidential and would only be provided after entry of an appropriate protective order: PSC-001(f), PSC-002(a), PSC-002(b), PSC-002(c), PSC-003(d), PSC-006(a), PSC-006(d), PSC-006(e), PSC-013(a), PSC-013(b), PSC-013(c), PSC-014(a), PSC-014(b), PSC-014(c), PSC-014(d), PSC-017(b), PSC-017(c), PSC-017(d), MCC-003(a), MCC-

005, MCC-009, MCC-017, MCC-025(a), MCC-026(a), MCC-027, MCC-039(a), MCC-039(b), and MCC-040.

7. On August 22, 2006, NORC filed a Motion for Protective Order (Motion) by which it sought protection of information sought by PSC-001(f), PSC-002(a), PSC-002(b), PSC-002(c), PSC-003(d), PSC-006(a), PSC-006(e), PSC-013(a), PSC-013(b), PSC-013(c), PSC-014(a), PSC-014(b), PSC-014(c), PSC-014(d), MCC-005, MCC-017, MCC-025(a), MCC-026(a), and any information related to the items. NORC asserted that each of the items is a trade secret under Montana law. In its Motion, NORC defined Competitive Bid Information as information that discloses either how a bidder valued NorthWestern for purposes of submitting a bid to acquire it, or how NorthWestern evaluated the competitive bids that were submitted to it. NORC defined Rating Agency Information as information prepared for submission to a Rating Agency. NORC sought special terms and conditions related to Confidential Bid Information and Rating Agency Information that would limit access to such information to inspection only by the Commission staff and MCC at the office of NORC's attorney.

8. On August 23, 2006, BBI filed a Motion for a Protective Order (Motion2) by which it sought protection of items PSC-006(d), PSC-017(b), PSC-017(c), PSC-017(d), MCC-009, MCC-027, MCC-039(a), and MCC-040. BBI asserted that each of the items is a trade secret or confidential business information that can be protected under Montana law. In Motion2, BBI defined BBI Acquisition Model as information that discloses how BBI valued NorthWestern for purposes of submitting a bid to acquire it. BBI defined Rating Agency Information as all information submitted to any Rating Agency, rating BBI that is non-public confidential and proprietary in nature, including information prepared for a submission to a Rating Agency which contains Acquisition Model data. BBI sought special terms and conditions with respect to BBI Acquisition Model and Rating Agency Information that would limit access to such information to inspection only by the Commission staff and MCC at the office of BBI's attorney.

Controlling Law

9. A corporation seeking a protective order for materials filed with a regulating governmental agency must support its claim of confidentiality by filing a supporting affidavit making a prima facie showing that the materials constitute property rights which are protected under constitutional due process requirements. *Great Falls Tribune v. Montana Pub. Serv. Comm'n*, 2003 MT 359, ¶ 56. The claimant's showing must be more than conclusory. It must

be specific enough for the PSC, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the claims to the right of confidentiality. *Id.*

10. If information is determined by a governmental agency or reviewing authority to qualify as a property right in the form of a trade secret which warrants due process protection secrecy can be preserved by the agency through reasonable means, including a protective order. *Great Falls Tribune*, ¶ 62.

11. “Trade secret” is defined by § 30-14-402, MCA, as “information or computer software, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

Special Terms and Conditions

12. NORC asserted that the Competitive Bid Information is of great commercial value and that if it is not physically lodged in the offices of the Commission or the MCC it cannot be alleged to be a public record.

13. NORC and BBI each asserted that if Rating Agency Information is not physically lodged in the offices of the Commission or the MCC it cannot be alleged to be a public record.

14. BBI asserted that if the BBI Acquisition Model is not physically lodged in the offices of the Commission or the MCC it cannot be alleged to be a public record.

15. NORC and BBI asserted that this rationale supported their requests for special terms and conditions.

16. The Commission finds that NORC and BBI have not shown that this information is not adequately protected by entry of an appropriate protective order or made any cogent factual demonstration of the need for the special terms and conditions. The Commission denies NORC and BBI’s requests for special terms and conditions covering the Competitive bid Information, Rating Agency Information, and BBI Acquisition Model.

PSC-001(f), PSC-003(d), PSC-006(a), and PSC-006(e)

17. PSC-001(f), PSC-003(d), PSC-006(a), and PSC-006(e) request all or part of the Company Disclosure Statement described in § 3.01 of the Merger Agreement or information related to it according to NORC’s responses to data requests.

18. In its Motion, NORC states, “The confidentiality of the Disclosure Letter, which is contractual, is also protected against public disclosure by protective order issued by the Federal Energy Regulatory Commission.” In his affidavit Brian Bird states:

“The Disclosure Letter contains exceptions to NWE’s covenants to BBI which reflects [sic] the negotiations between BBI and NWE on the terms of the transaction. Such information captures, in part, BBI’s confidential and closely held valuation and assessment of NWE. The Federal Energy Regulatory Commission has already issued a protective order which protects the confidentiality of the Disclosure Letter.”

19. Review of the docket sheet for FERC docket EC06-127 reveals that FERC has not issued any protective order regarding the disclosure statement. Under FERC rules, a party may submit information that it claims is not subject to disclosure. FERC will put that information into a non-public file without making any determination as to the status of the claimed confidentiality. A member of the public may submit a FOIA request. If FERC determines that the information is not confidential, the information will be made public. All that has been done with the Company Disclosure Letter is that it has been submitted to FERC with a claim of confidentiality. Any member of the public could file a FOIA request for the information that would trigger a FERC review and determination. See generally 18 CFR 388.108-112.

20. From Brian Bird’s affidavit, the claim of independent economic value appears related to “BBI’s confidential and closely held valuation and assessment.” However, from BBI’s Motion², it is clear that BBI has not revealed its valuation and assessment to NORC.

21. This document appears to be of critical importance. NORC’s Form 14A, Definitive Proxy Statement, filed with the SEC contained the following: **“Accordingly, you should not rely on the representations and warranties as characterizations of the actual state of facts, since they are modified in important part by the underlying section of the confidential disclosure letter.”**

22. The Commission finds that NORC has not met its burden to show that the Company Disclosure Letter derives independent economic value from not being generally known, that it is not readily ascertainable by proper means, or who can obtain economic value from its disclosure. The Commission denies the Motion for a protective order covering Company Disclosure Letter and orders NORC to produce it.

PSC-002(a)

23. PSC-002(a) requests the minutes of meetings of NORC's Board of Directors.

24. In its response to the data request, NORC stated, "Upon entry of an appropriate protective order, NorthWestern will provide, for the requested period, the Board minutes which address the transaction. The full Board minutes for the requested period will also be made available for limited inspection (no copying) by the Commission and the Montana Consumer Counsel at the office of [NORC's attorney] provided that a non-waiver agreement is first executed." In its Motion, NORC did not make any argument specific to the Board minutes but requested that all Board minutes be treated as Competitive Bid Information.

25. With respect to the Board minutes, Brian Bird's affidavit contains the following statements: "Both the Commission and the Montana Consumer Counsel have requested in discovery the competitive bids submitted to NWE, including the identity of potential bidders and actual bidders, and the Board of Directors and its legal and financial advisors' analyses of the bids. The requests include the relevant Board minutes. For the reasons that I have already explained above, that information is highly confidential business information both as to NWE, and as to the bidders, which must be protected against any disclosure, other than a right of inspection by the Commission's Staff and the Montana Consumer Counsel." and "Until the transaction between NWE and BBI is closed, it is essential to the business interests of NWE that the confidentiality of the competitive bid process be strictly maintained. If the proposed transaction between NWE and BBI is not consummated the competitive bid information will be of great value to any party interested in acquiring NWE, or investing in its stock."

26. Generally minutes of board of directors meetings will meet the criteria for trade secret. See, e.g., *Ex parte Miltope Corp.*, 823 So. 2d 640, 644 (Ala. 2001). However, NORC has not demonstrated that its Board minutes contain sufficient detail to constitute trade secret either with respect to Competitive Bid Information or any other matters.

27. The Commission finds that NORC has not shown that its Board minutes are trade secret. The Commission denies the motion for a protective order covering the Board minutes without prejudice and orders NORC either to file a new motion with more supporting evidence than the conclusory statements contained in this motion or to produce the documents by September 15, 2006.

PSC-002(b)

28. PSC-002(b) requests the minutes of NORC's energy supply boards.

29. Brian Bird, in his affidavit, states, "The minutes of the Energy Supply Board reveal the strategic considerations and deliberations of the NWE personnel charged with negotiating the required supply contracts. It is my understanding that the Commission has already issued a protective order, in another docket, which protects such information against public disclosure."

30. The strategic considerations and deliberations of the relevant persons would have independent economic value to NORC's counterparties.

31. The Commission finds that NORC has made a prima facie showing that the minutes of its energy supply boards' meetings are trade secret. The Commission enters a protective order with the standard terms and conditions set forth in ARM 38.2.5014 through 5028 (Standard Terms) covering the minutes of NORC's energy supply boards.

PSC-002(c)

32. PSC-002(c) requests all written analyses of strategic alternatives and sale proposals that were provided to NORC's Board of Directors. MCC-005 requests documents comprising the thorough review and analysis of strategic alternatives and consideration of the final proposals.

33. In its Motion NORC states that there are 45 documents or presentations, listed in Appendix 3 to the Motion, that were provided to NORC's Board, that each of the bidders has confidential proprietary interests in the information submitted under confidentiality agreements, and that this information is Competitive Bid Information.

34. In his affidavit, Brian Bird made the statements referred to above in the discussion of PSC-002(a) and stated the following:

"Confidentiality is a critical and integral part of the competitive bid process that was conducted by NWE. . . . In addition, potentially interested parties usually don't want their intentions publicly known, either during the competitive bidding process, or after its completion. They bargain for the confidentiality of their involvement as a condition of their participation. Each of the bidders has a signed confidentiality agreement which protects both the existence, and the details of their participation against public disclosure, and, with the exception of MPPI and Black Hills Power, the fact that they were even interested in participating."

“The confidentiality does two things: (i) it ensures that the Board is acting in accordance with its fiduciary duties and (ii) it provides economic advantage to NWE and its stockholders because interested parties have to make their best offer not knowing what their competitors are offering. It provides economic advantage to the interested parties, because a party can make its best offer knowing that other interested parties don’t have the ability to simply mimic their offer at a slightly higher price.”

35. The Commission finds NORC has made a prima facie showing that the names of the bidders are trade secret.

36. NORC has publicly revealed that the final proposals ranged from \$32.71 to \$37.60 per share and that all bids remained open until May 5, 2006.

37. The Commission finds that NORC has failed to show that the analyses of strategic alternatives and sale proposals or the documents comprising a thorough review and analysis of the strategic alternatives and consideration of the final proposals are trade secret.

38. The Commission enters a protective order with the Standard Terms covering the analyses of strategic alternatives and sale proposals or the documents comprising a thorough review and analysis of the strategic alternatives and consideration of the final proposals are trade secret that disclose the identity of the bidder. The Commission orders NORC to make a public filing of the analyses and documents with the names of the bidders redacted.

PSC-013(a)

39. PSC-013(a) requests a list of prospective purchasers to whom NORC sent its bid solicitation.

40. In its Motion NORC states, “The list was prepared by NWE’s advisors, and utilized both the confidential proprietary information of the advisor and NWE. . . . As to NWE, the list is Competitive Bid Information.”

41. Brian Bird’s affidavit states, “As described in the Proxy Statement, 23 potential bidders were contacted, of which 10 signed confidentiality agreements governing their examination of NWE, and their submission of a competitive bid.”

42. The Commission finds that NORC failed to show that the list of 23 potential bidders has independent economic value or is trade secret. Even if confidential information is used to generate a list, disclosure of the list does not disclose the confidential information. The

Commission denies the Motion for a protective order covering the list of prospective purchasers to whom NORC sent its bid solicitation and orders NORC to produce the list.

PSC-013(b)

43. PSC-013(b) requests documents issued by NORC to prospective purchasers as part of the strategic review. MCC-017 requests materials provided by NORC to BBI for its review and evaluation.

44. In its Motion, NORC represents that the information was provided to prospective purchasers (1) as part of a Confidential Information Memorandum, (2) by password-protected access to an Electronic Data Room, (3) at management presentations given at a series of bidder conferences, and (4) through its financial advisors in response to data requests from bidders.

45. NORC asserts that the Confidential Information Memorandum is Competitive Bid Information and that the bulk of it is forecasted financial data.

46. NORC asserts that two of the items in the Electronic Data Room, a proposed strategy to mitigate QF contract liability and forecasted financial data, should be protected as Competitive Bid Information.

47. NORC asserts that perhaps a third of management presentations included financial data that should be treated as Confidential Bid Information.

48. NORC asserts that the responses to bidders' data requests are voluminous, contain a mixture of publicly available data, confidential business information, and Competitive Bid Information.

49. NORC argues further that this information was provided under confidentiality agreements.

50. Brian Bird's affidavit only adds that "NWE provided, under confidentiality agreements, confidential business information which is not reported in its published financials" and that as a publicly traded company, NORC is "prohibited by securities law and regulations from selectively disclosing their non-public, material business information."

51. First, none of the information requested by these data requests is Competitive Bid Information, as it discloses neither how a bidder evaluated NORC nor how NORC evaluated a competitive bid.

52. Second, NORC is not prevented from disclosing the information by the confidentiality agreements. The confidentiality agreement between NORC and BBI was

provided as part of response to data request PSC-003(c). The confidentiality agreement restricts the Receiving Company, not the Delivering Company, from disclosing the information. NORC is the Delivering Company.

53. Third, disclosure of financial data to persons who have an obligation to keep it confidential is not a violation of securities law or regulation. A person who is subject to a protective order has an obligation to comply with such.

54. The Commission finds that NORC has made a prima facie showing that the non-public documents provided to prospective purchasers and BBI are trade secret. The Commission enters a protective order with the Standard Terms covering the non-public portions of documents issued by NORC to prospective purchasers as part of the strategic review and materials provided by NORC to BBI for its review and evaluation. The Commission orders NORC to produce the public portions of the documents and materials provided to prospective purchasers and BBI.

PSC-013(c)

55. PSC-013(c) requests documents received by NORC from BBI.

56. In its Motion, NORC merely says “The requested information was provided by BBI to NWE under a confidentiality agreement. . . . to the extent that the information provided by BBI to NWE was not incorporated into the Agreement and Plan of Merger, it is Competitive Bid Information.”

57. Brian Bird’s affidavit reiterates these assertions.

58. The confidentiality agreement imposes an obligation on NORC to notify BBI of a request for this information so that BBI could seek a protective order. The confidentiality agreement further provides that even in the absence of a protective order, NORC may disclose the information if so required. BBI did not seek a protective order for this information.

59. The Commission finds that NORC has not made a prima facie showing that these documents are trade secret. The Commission denies the Motion for a protective order covering documents received by NORC from BBI and orders NORC to produce the documents.

PSC-014(a)

60. PSC-014(a) requests a detailed description of each offer received showing total consideration per share, including debt assumed.

61. NORC included this data request in the argument and representations regarding PSC-002(c) and MCC-005.

62. A detailed description of an offer need not include the identity of the bidder. It need only reveal the offered purchase price, how the purchase price was to be paid, and the amount of any debt assumed. NORC has represented that the offers ranged from \$32.71 to \$36.70 per share and that all offers expired on May 5, 2006.

63. The Commission finds NORC has not shown how the additional information requested by this item for stale bids has independent economic value or is trade secret. The Commission denies the Motion for a protective order covering a detailed description of each offer received and orders NORC to produce the detailed description.

PSC-014(b) and PSC-014(c)

64. PSC-014(b) requests documents received from prospective acquirers that relate to or demonstrate how the prospective acquirer satisfies the Commission's criteria/factors set forth in Docket No. N2004.10.166, Statement Of Factors For Evaluating Proposals To Acquire Northwestern Energy. PSC-014(c) requests analyses and evaluations performed by NORC or its agents for each bidder with respect to the criteria/factors.

65. NORC included this data request in the argument and representations regarding PSC-002(c) and MCC-005.

66. In its response to data request PSC-014(b), NORC indicated that this information would be contained in the bid letters it received from prospective acquirers.

67. NORC has not shown that it cannot provide the portions of the bid letters containing this information without revealing the identities of the bidders.

68. The Commission finds that NORC has not shown that the information in the bid letters or its evaluations of bidders (not bids) with respect to the Commission's criteria/factors has independent economic value or is trade secret. The Commission denies the Motion for a protective order covering documents received from prospective acquirers that relate to or demonstrate how the prospective acquirer satisfies the Commission's criteria/factors and analyses and evaluations performed by NORC or its agents for each bidder with respect to the criteria/factors and orders NORC to produce the pertinent portions of the documents with redactions necessary to protect the identity of the bidder.

PSC-014(d)

69. PSC-014(d) requests the underlying analysis supporting NORC's public representation that the MPPI proposal was unlikely to obtain regulatory approval and funding.

70. NORC included this data request in the argument and representations regarding PSC-002(c) and MCC-005.

71. The results of NORC's analysis of the MPPI offer are public information:
the Board determined the financial terms were not compelling;
the Board believed the proposed break-up fee of \$700,000 was inadequate;
the Board believed there was significant risk that MPPI would not be able to obtain regulatory approval for a 100% debt financed transaction; and
the Board had reservations concerning legal, regulatory and financing issues.

72. NORC performed the analysis in October 2005.

73. The Commission finds that NORC has not shown that the underlying analysis has independent economic value and is trade secret. The Commission denies the Motion for a protective order covering the underlying analysis supporting NORC's public representation that the MPPI proposal was unlikely to obtain regulatory approval and funding and orders NORC to produce the underlying analysis.

MCC-025(a)

74. MCC-025(a) requests communications between NORC or BBI and debt rating institutions.

75. Both NORC and BBI sought protection of this information

76. In its Motion NORC asserted that it submits highly confidential business information, such as forecasted financial data and strategic plans, to Rating Agencies on a confidential basis.

77. In his affidavit, Brian Bird states, "The business information which NWE submits confidentially to Rating Agencies is protected against public disclosure. NWE provides Rating Agencies highly confidential business information which cannot be found in its published financials."

78. In his affidavit, Michael Garland stated:

"That BBI is required to submit confidential information to Rating Agencies. The business information which BBI submits confidentially to Rating Agencies is protected against public disclosure. BBI provides Rating Agencies highly confidential business information which cannot be found in its published financials. Such information includes forecasted financial data, strategic business

plans and information associated with the BBI acquisitions Model, as well as information that has nothing to do with the transaction at hand.

The information submitted to Rating Agencies contains confidential information which must not be disclosed, either to the public generally, or selectively to parties or their representative who are positioned to use the information to their competitive and financial advantage. The participants in this docket, other than the MCC, and the MPSC, should not be allowed access to such information even under a standard Commission issued protective order which guards against a broader dissemination of the information.”

79. The Commission finds that NORC and BBI have made a prima facie showing that forecasted financial data and strategic plans have independent economic value from not being generally known and are trade secrets. The Commission enters a protective order with the Standard Terms covering communications between NORC or BBI and debt rating institutions.

PSC-006(d) and MCC-009

80. PSC-006(d) and MCC-009 requested the Financing Commitments referenced in § 3.02 of the Merger Agreement.

81. The Financing Commitments are the financing letters with respect to debt financing of \$505,000,000 that BBI has delivered to NORC.

82. In its Motion2, BBI asserted that “any financial commitments are confidential in nature and BBI does not want its competitors to understand or learn how it structures its myriad transactions, nor do the lenders want their competitors to know the terms and rate they have committed to finance”

83. Michael Garland did not address the Financing Commitment in his affidavit.

84. The Commission finds that BBI has not met its burden of making a prima facie showing that the Financing Commitments are trade secret. The Commission denies BBI’s motion for a protective order covering the Financing Commitments and order BBI to produce the Financing Commitments.

PCS-017(b)

85. PSC-017(b) requests minutes of meetings of BBI and its parent’s boards at which NORC and its acquisition were discussed.

86. In his affidavit, Michael Garland stated, “The [board minutes] contain confidential proprietary information and merit protection equal to the protection afforded to the Acquisition Model information.”

87. As discussed in paragraph 26, board minutes are generally trade secret. However, like NORC, BBI has not demonstrated that its board minutes contain sufficient detail to disclose trade secrets. The Commission denies BBI’s motion for a protective order covering the board minutes without prejudice and orders BBI to either file a new motion with more supporting evidence than the conclusory statements contained in Motion2 or to produce the documents by September 15, 2006.

PSC-0017(c), PSC-017(d), MCC-039(a), and MCC-040

88. PSC-0017(c) requests opinions, valuations, analyses, or other written documents BBI’s consultants or advisors provided to BBI’s board of directors. PSC-017(d) requests all written analyses and/or evaluations of the proposed acquisition whether prepared internally at BBI or its parent or by an outside advisor or consultant. MCC-039(a) requests BBI’s due diligence evaluation of the proposed merger with all supporting data, tables, schedules, and calculations. MCC-040 requests all reports, studies, evaluations, projections, and opinions regarding the proposed merger that were prepared by or for BBI

89. BBI identified the consultant and advisor documents include reports from (1) Mercer Finance and Risk Consulting Group, (2) Marsh & McLennan Companies, (3) PA Consulting Group, (4) KPMG LLP, and (5) Stone and Webster Management Consultants, Inc.

90. BBI stated that the written analyses and evaluations include a Capital Approval Request and a Board Presentation. There may be other unidentified documents.

91. In its Motion, BBI asserted that it has developed an Acquisition Model to determine an appropriate purchase price for a target entity and that the Acquisition Model derives independent economic value from not being generally known. These assertions were supported by specific allegations of fact in Michael Garland’s affidavit.

92. The Commission finds that BBI has made a prima facie showing that the Acquisition Model is trade secret.

93. The critical inputs to the Acquisition Model include assumptions relating to operating revenues and expenses, prospective state-by-state electric and gas rate increases, organic and

external growth projections, replacement and expansion capital expenditures, federal, state and local tax projections and expected rates of return and income projections.

94. The Commission finds that BBI has not established that the inputs to the Acquisition Model for the NORC acquisition derive independent economic value now, after an agreement has been reached.

95. The Commission finds that BBI has not shown that its determination of an appropriate purchase price derives independent economic value. BBI has determined its appropriate purchase price and the parties have reached an agreement. Presumably the agreed price of \$37.00 per share is less than or equal to the appropriate purchase price. Even if the appropriate purchase price is significantly higher than the agreed price, disclosure of it cannot affect this transaction.

96. The Commission finds that BBI has not established which of the consultant and advisor reports or the written analyses and evaluations contain information that would disclose its Acquisition Model.

97. The Commission enters a protective order with the Standard Terms covering BBI's Acquisition Model and those elements of the consultants' reports and analyses and evaluations that reveal specific details of the Acquisition Model. The Commission orders that BBI produce redacted versions of the documents that do not disclose the Acquisition Model but do disclose the critical inputs and results of the model with respect to this transaction.

MCC-026(a) and MCC-027

98. MCC-026(a) requests documents supporting the pre-filed testimony of Michael Garland that BBI has been attracted by NorthWestern's "stable existing customer bases and its steady growth opportunities. MCC-027 requests a detailed description and amount of the planned capital expenditures that BBI has considered in pursuing this merger transaction.

99. In its response to MCC-026(a), BBI stated, "Documents regarding the growth opportunities referred to in the testimony are contained in confidential and proprietary documents provided to the BBI Boards"

100. BBI did not address MCC-026(a) in either its Motion² or the affidavit of Michael Garland. Organic and external growth projections appear to be an input into the Acquisition Model.

101. In its response to MCC-027, BBI stated, “Documents regarding the capital expenditure assumptions referred to in the testimony are contained in confidential and proprietary documents provided to the BBI Boards”

102. BBI did not address MCC-027 in either its Motion² or the affidavit of Michael Garland. Replacement and expansion capital expenditures are an input into the Acquisition Model.

103. The Commission finds that BBI has not made a prima facie showing that documents regarding growth opportunities or a description and amount of the planned capital expenditures are trade secret. The Commission denies BBI’s motion for a protective order covering documents supporting the pre-filed testimony of Michael Garland that BBI has been attracted by NorthWestern’s “stable existing customer bases and its steady growth opportunities and a detailed description and amount of the planned capital expenditures that BBI has considered in pursuing this merger transaction and orders BBI to produce the documents with any redactions necessary to avoid disclosure of the specific Acquisition Model.

MCC-039(b)

104. MCC-039(b) requests documents regarding BBI’s participation in sale processes of regulated electric utilities in the United States in the past 30 months.

105. In response to data request MCC-039(b), BBI stated, “Specific information regarding BBI’s participation in these processes, including the identity of the potential sellers, remains subject to confidentiality agreements with the potential sellers.”

106. BBI did not address this information in either its motion or the affidavit.

107. The Commission orders BBI to produce documents regarding BBI’s participation in sale processes of regulated electric utilities in the United States in the past 30 months.

DONE IN OPEN SESSION at Helena, Montana on the 7th day of September, 2006 by a vote of 5 to 0 for all paragraphs except 35, 38 and 68 that were by a vote of 4 to 1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

Greg Jergeson, Chairman

Brad Molnar, Vice Chairman

Doug Mood, Commissioner

Robert H. Raney, Commissioner

Thomas J. Schneider, Commissioner
(dissenting as to ¶¶ 35, 38 and 68)

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

Montana Public Service Commission
Protective Orders and Protection of Confidential Information

Nondisclosure Agreement

(7-26-00)

ARM 38.2.5012

Docket No. D2006.6.82, Order No. 6754a
Order Action Date: September 7, 2006

I understand that in my capacity as counsel or expert witness for a party to this proceeding before the commission, or as a person otherwise lawfully so entitled, I may be called upon to access, review, and analyze information which is protected as confidential information. I have reviewed ARM 38.2.5001 through 38.2.5030 (commission rules applicable to protection of confidential information) and protective orders governing the protected information that I am entitled to receive. I fully understand, and agree to comply with and be bound by, the terms and conditions thereof. I will neither use nor disclose confidential information except for lawful purposes in accordance with the governing protective order and ARM 38.2.5001 through 38.2.5030 so long as such information remains protected.

I understand that this nondisclosure agreement may be copied and distributed to any person having an interest in it and that it may be retained at the offices of the provider, commission, consumer counsel, any party and may be further and freely distributed.

Typed or Printed Name

Signature

Date of Signature

Business Address:

Employer

Party Represented